

OCT 14 1983

ALEXANDER L. STEVAS,
CLERK

83 - 635

No. 83-1183

IN THE SUPREME COURT OF THE UNITED STATES

January Term, 1984

No. _____.

BOYD VEENKANT, per se,
Petitioner,

- VS -

JANNETT L. COOK (Substitution
of Parties by GCR Rule 202.2
to LYDIA (COOK) DeWOLF), et al,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the United States
* * Oral Argument Requested * *
from
U.S. Court of Appeals, Sixth Circuit.

BOYD VEENKANT, per se,
P.O. BOX 115
ALLEGAN, MI. 49010-0115
1 (616) 673-4400

JANET K. YARDING,
LOUIS J. CARUSO and
GEORGE H. WELLER, Assist. Atty. Gen.,
MICHAEL T. LYBCH,
HOWARD S. SIEGRIST, per se,
NOEL L. LIPPMAN, per se,

Of Counsel.

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QUESTION PRESENDED

Were under 28 §1343. Civil Rights and elective franchise (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or aid in preventing any wrongs mentioned in section 1986 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute,

ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights.

PROPERTY -The fifth amendment to the Federal Constitution provides, in part, that "no person shall be ** deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation".

A similar injunction is incorporated into the fourteenth amendment: "no State shall *** deprive any person of life,

liberty, or property, without due process of law".

(Due process is) ...A law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. (16 Am Jur 2d Sec. 546)

Michigan criminal code - "Theft"-
Sec. 3205.(1) "Theft" means the doing of either of the following acts with the intent to deprive the owner permanently of the property: (a) Knowingly to obtain or exert unauthorized control over the property of the owner. Theft in the second degree Sec. 3207. (1) A person commits the crime of theft in the second degree if he (Ms.) commits theft of property which exceeds \$1,000.00.
(2) Theft in the second degree is a Class D felony.

Michigan Criminal Code Section 435-
Judging from the response to an argument

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raised by the defendant in a Michigan case that the "corporate veil" should protect him, the result would be expected to be different in Michigan. In People V. Johnson, 28 Mich. App. 10, 18, 183 N.W. 2d 813 (1970). the court said: "It is well established that corporate officers may be criminally liable for their own acts although performed in their official capacity as such officers."

Michigan Criminal Code "Tampering with physical evidence" Sec. 5045 (1) A person commits the crime of tampering with physical evidence if ~~he does either of~~ the following: (b) Knowingly makes, presents or offers any false physical evidence with intent that it be introduced in a pending or prospective official proceeding. (Yes it was.)

(2) "Physical evidence" includes any article, object, document, record or oth-

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er thing of physical substance. (It was)

(3) Tampering with physical evidence is a Class D felony. (C.L.1970,Sec.750.491)

Then under Sec. 5045. (a) Destroys, mutilates, conceals, removes or alters physical evidence with intent to impair its verity or availability in a pending or prospective official proceeding.

(2) "Physical evidence" includes any article, object, document, record or other thing of physical substance.

(3) Tampering with physical evidence is a Class D felony. (yes this took place.)

Civil Rights Act-"Public Law 90-284
90th Congress, H.R. 2516 April 11, 1968

"§ 245. Federally protected activities.

"(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be con-

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sidered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, , any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term 'law enforcement officer' means any officer of the United States, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, a State , or a political subdivision of a State:

CIVIL RIGHTS ACT- Public Law 88-352

88th Congress, H.R. 7152 July 2, 1964.

TITLE II- INJUNCTIVE RELIEF AGAINST

DISCRIMINATION IN PLACES OF PUBLIC

ACCOMMODATION. Covering Sec. 201; 202;

203; 204; 205; 206 and Sec. 207 District

courts, jurisdiction.

: VII :

In this Court case, Jannett L. Cook by theft, removed Boyd Veenkant's personal property from her deceased husbands house. Then Respondent Noel L. Lippman let this Petitioner's Court case go default and was disbarred in the meantime and did nothing about it, until this Petitioner filed his Complaint with the State Bar of Michigan. Then Respondent Lippman Conspired with Respondent Howard S. Siegrist and between them, they drafted knowingly false physical evidence with intent that it be introduced in this pending official proceeding and it was signed by Atty. Howard S. Siegrist and presented to the Court.

This Petitioner hired Atty. John Watt's to represent him and open the case up, so Respondent Donald Wm. Sargent in representing the Defendant, drafted knowingly a false physical evidence

with intent that it be introduced in the pending court case.

That on the date the Motion was called by Atty. Watt's, asking to open up this court case, Respondent Atty. Sargent made the same claim as he had filed with the Court and being false physical evidence. That Atty. Sargent had receipts marked paid in full covering the personal property removed from the Cook house, but never produced the receipts or would he produce the receipts he claimed to have. Further instructs this Court, that Atty. Donald Wm. Sargent never signed his name upon this document that he filed with the Court, claiming to have receipts covering the personal property in question.

Then Respondent District Court Judge Sherman P. Faunce, not only denied Atty. John Watt's to represent

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this Plaintiff, but dismissed the case.

That when this Petitioner ordered a copy of the transcript covering the motion, Judge Sherman P. Faunce had removed from the transcript, Atty. Donald Wm. Sargent's claim to the Court that he had marked paid in full receipts covering the personal property in question.

Then this Petitioner filed his case under a 'CIVIL RIGHTS ACT' with the United States District Court of Western District of Michigan, which they dismissed without even calling a hearing and denying this Petitioner "Due process of law", the same as District Court Judge, Sherman P. Faunce did. That as stated above, this Petitioner filed his Court complaint in U.S. District Court for the Western District of Michigan, under 28 § 1343 as is allowed to be done and did.

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PARTIES TO THE PROCEEDING -

The parties to this proceeding is -
Petitioner, BOYD VEENKANT, per se, and
the Respondents are LYDIA COOK DeWOLF,
(Substitution of Parties by GCR Rule 202)
for her mother, JANNETT L. COOK; Atty.
DONALD WM. SARGENT; Atty. NOEL L. LIPP-
MAN; Atty. HOWARD S. SIEGRIST; District
Ct. Judge SHERMAN P. FAUNCE, Respondents.

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- e.g., Alderman V. People, 4 Mich. 414
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- Harmon V. Superior Ct of the State of
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- Horvath V. National Mortgage Company, 238
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- Monell V. Department of Social Services
(1978) 436 US 658, 56 L Ed 2d 611, 98 S
Ct 2018, and etc.
- People v. Anderson, 7 Mich. App. 513, 152
N.W. 2d 40 (1967).
- People V. Arnold, 46 Mich. 268, 273, 9
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- People V. Boyd, 174 Mich. 321, 140 N.W.
475 (1913).
- People V. Chapman, 62 Mich. 280, 28 N.W.
896 (1886).
- People V. Coleman, 350 Mich. 268, 86 N.W.
2d 281 (1957).
- E.g. People V. Fox, 25 Mich. 492 (1872).
- People V. Johnson, 28 Mich. App. 10, 18, 183
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- People V. Kimble, 60 Mich. App. 690, 223
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- People V. Long, 27 Mich. App. 385, 183
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People V. Marion, 29 Mich. 31 (1874).

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IN THE SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1984.

No. _____

BOYD VEENKANT, per se,
Petitioner,

VS.

JANNETT L. COOK (Substitution of
Parties by GCR 202.2) For her mother
LEDIA (COOK) DeWOLF; Atty. DONALD WM. SA-
RGENT, Atty. NOEL L. LIPPMAN, Atty.
HOWARD S. SIEGRIST, Dis.Ct. Judge
SHERMAN P. FAUNCE,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
form

THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

The Petitioner, Boyd Veenkant, per
se, respectfully pray that a writ of
certiorari issue to review the order's

of the United States District Court, for the Western District of Michigan and of the United States Court of Appeals, Sixth Circuit intered in this proceeding on September 2, 1983.

ORDER BELOW.

This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. (Judges-LIVELY, MERRITT, and PEAK.) After examination of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiff appeals the district court order entered February 7, 1983, dismissing his civil rights action. Having carefully examined the record and briefs, this Court concludes the district court did not err in disposition of this case. Accordingly, for the reasons

stated in district court opinion entered February 7, 1983 the order of the district court is hereby affirmed. Rule 9 (d)(2), Rules of the Sixth Circuit.

Based upon the record in this case and the briefs filed, we are convinced that this appeal is frivolous. This appeal amounts to little more than a continued abuse of process which raises no colorable legal or factual basis for the relief sought.

It is totally lacking in merit, framed with no relevant supporting law, conclusory in nature, and utter nonsense.

In fact this Court notes unfavorably the pattern of frivolous litigation perpetuated by plaintiff. See Veenkant V. Gurn, Case No. 82-1582 (6th Cir.1983); Veenkant v. Wesler, Case No. 82-1584 (6th Cir. 1983); Veenkant v. Burdick, Case No. 82-1583 (6th Cir. 1983);

Veenkant v. Corsiglia, Case No. 82-18-24 (6th Cir. 1983)(unpublished opinions)

Pursuant to Federal Rule of Appellate Procedure 38, we award double costs and just attorneys fees to appellees.

ENTERED BY ORDER OF THE COURT

JOHN P. HEHMAN
Clerk

JURISDICTION.

The ORDER of the U.S. Court of Appeals for the Sixth Circuit was entered on September 2, 1983, and this petition for certiorari was filed within 90 days of that date.

This Court's jurisdiction is invoked under 28 U.S.C., Section 1343, Civil Rights Act's below stated.

§§ 1983, 1985(3), 1986, 1988 and under Title 18., U.S. Code, Title 28, Section 2072; Section 1254 (1), (2); The V. and XIV Amendments; The Constitut-

ional "Bill of Rights"; Public Law 90-284 90th Congress, H.R. 2516, "§ 245. Federally protected activities"(2)"(B),"(5)"(c); Public Law 88-352 88th Congress, H.R. 7152, Title II-Injunctive relief against discrimination in places of public accommodation. Sec. 201, 202, 203, 204, and 207.(a).

STATUTORY PROVISIONS INVOLVED

MICHIGAN statutes:

1- Larceny (C.L. 1970, Section 750.356), Knowingly and over \$1,000.00.

2-Tampering with physical evidence
Sec. 5045.(1) A person commits the crime of tampering with physical evidence if he does either of the following: (b) Knowingly makes, presents or offers any false physical evidence with intent that it be introduced in a pending or prospective official proceeding. (3)

Tampering with physical evidence is a Class D felony. (C.L. 1970, Section 750.491.)

3- Perjury, (C.L. 1970, Section 750.423.)

4- Tampering with physical evidence Sec. 5045. (1) A person commits the crime of tampering with physical evidence if he does either of the following: (a) Destroys, mutilates, conceals, removes or alters physical evidence with intent to impair its verity or availability in a pending or prospective official proceeding. (3) Tampering with physical evidence is a Class D felony. (C.L. 1970, Section 750.491 ("mutilating, removing, etc. public records"); C.L. 1970, Section 750.388 ("removing property seized by legal process")).

~~5- Liability based upon the behavior~~
of another: No defense. (C.L. 1970, Sect-

ion 767.39).

6- Forgery- (C.L.1970,Sec.750.248).

7- Obtaining a signature by deception.

(C.L.1970, Section 750.273) and (C.L.

1970, Section 750.274).

8- Criminal Conspiracy, (C.L.1970, Sec.
750.157)

FEDERAL STATUTES:

1- U.S. Code, Title 42, Section 1983.

2-U.S.Code,Title 42, Section 1985(3).

3-U.S. Code,Title 42,Section 1986.

4-U.S. Code,Title 42,Section 1988.

5-U.S.Criminal Code,Title 18,Sec.241.

6-U.S.Criminal Code,Title 18,Sec.242.

7- U.S. Code, Title 28, Section 2072.

8- Public Law 90-284 "§245 Federally
protected activities "(2)"(B), "(5)"(c).

9-Public Law 88-352 88th Congress, H
R. 7152, Title II Injunctive relief ag-
ainst discrimination in places of publ-
ic accommodation. Section's 201, 202,
203, 204, and 207.(a).

10- Supreme court's views as to mea-

ning of term "PERSON", as used in statutory or constitutional provision.

Meaning of "PERSON" 56 L Ed 895 ANN-otation.

11- 28 U.S.C., Section 1343, Civil Riights Act's.

STATEMENT OF THE CASE.

Petitioner ,Boyd Veenkant ran the Allegan Motel, at Allegan,Michigan and a Mr. Standley Cook came and rented a Motel room one fall for to hunt deer in Allegan County. All Mr. Cook had was a high power rifle and only a shot gun was allowed. So this Petitioner loaned Stanley Cook a shot gun so he could hunt deer. This is how I came to know Stanley and Jannett Cook, as Stanley Cook liked the scenery of Allegan County and brought his wife Jannett a number of times to show her the scenery.

Stanley Cook was a distributor for Madison Paints & Coatings in the

Detroit, Michigan area, under the business name of "AAA Mason Contractors".

Stanley Cook set up Veenkant & Co., which was owned and operated by Boyd Veenkant, as a dealer under Stanley Cook to sell "Madison Paints & Coatings". Then Stanley Cook asked Boyd Veenkant if he could sell some of his sporting goods on the side to make a little money and it was agreed that Stanley Cook could.

Finely Standley Cook stated, I cannot sell your sporting goods, unless you let me have some to show the people what they want. It was again arranged to let Stanley Cook take home whatever guns he thought he had sold, home with him. He kept coming back and wanted different guns and shells to go with the gun's he had and also took other sporting goods.

Petitioner states, Stanley Cook was

always given a pā¹⁰per covering the object or objects he took home with him, with the dealer cost price. This was not a billing machine purchase receipt, but only a sheet of paper listing the dealer cost. Stanley Cook got a gun to take back home and was issued this cost price and he left for home, but in a very few minutes Stanley Cook was back and stated, if I am in a car accident or get stopped by the police, I could be in trouble if I cannot show where I got this gun.

Stanley Cook stated, if you sign the paper and mark it paid, I'll never use this paper as a receipt of purchase and this will clear me in case I am stopped for some reason. So thereafter each time Stanley Cook took sporting goods, he asked this Petitioner to sign the cost sheet piece of paper and mark it paid, with the assurance each time that

this cost sheet of paper never would be claimed as a purchase receipt of the sporting goods gotten from Boyd Veenkant at Allegan, Michigan from his place of business. Stanley Cook's wife, Jannett was with Stanley a few times when he picked up Boyd Veenkant's merchandise and knew about the paper with the cost price on it and knew it was signed to protect them in transporting the merchandise from Allegan, Michigan, back to their home in Warren, Michigan and that these sheets of papers with the cost price on them and signed, could not be used as purchase receipts. MICHIGAN STATUTE- "Obtaining a signature by deception. (C.L. 1970 Section 750.273) and (C.L. 1970, Section 750.274). (E.g., Horvath v. National Mortgage Company, 238 Mich. 354, 360, 213 N.W. 202 (1927).

Petitioner further states, there was a quantity of his personal property in the Stanley Cook home, when Stanley Cook was shoot and died. Further states, Stanley Cook had a "WILL" and the "WILL" of Stanley Cook, would cover this Petitioners personal property and be returned or turned over to this Petitioner, but it was not.

That when this Petitioner went to the deceased Stanley Cook home to pick up his personal property, Jennett Cook was not there, but Jannett's sister, Mrs Geneviene Virgilio was at the deceased Stanley cook home and instructed the Veenkant's, your personal property is all right down in the basement as of right now, but I have not been given the permission to release it to you. Therefore, you'll have to come back to get it when Jannett is home.

When this Petitioner went back when Jannett Cook was home to pick up his personal property, Jannett Cook started to state, she didn't have any of Boyd Veenkant's personal property, when Mrs. Genevieve Virgilio interrupted and stated, it's all right down in the basement.

Then Jannett Cook stated, it all belonged to Stanley and it's going to stay in the basement.

Petitioner states, he got a Court Order for the police to go to the Jannett Cook home to recover this Petitioner's personal property and by this time, Jannett Cook had removed this Petitioner's personal property out of the Cook home so the police could not recover it.

This is covered by the Michigan Statute, "Theft in the second degree, Sec. 3207. (1) A person commits the crime of

theft in the second degree if he commits
theft of property which exceeds \$1,000.

(2) Theft in the second degree is a Cl-
ass D felony. (C.L. 1970, Sec. 750.356)

Case in support-People v. Anderson, 7
Mich. App. 513, 152 N.W. 2d 40 (1967).

Federal Statute- §9. Civil Rights A-
ct of 1871. In Monell v. Department of
Social Services (1978) 436 US 658, 56 L
Ed 2d 611, 98 S Ct 2018, held that a ci-
ty, its mayor, its department of social
services, the department's commissioner
in his official capacity, the city's bo-
ard of education, and the board's chan-
cellor in his official capacity, were
all "persons" subject to liability under
42 USCS § 1983-which imposes civil liab-
ility on "every person" who, under color
of state law, deprives another of rights,
privileges, or immunities guaranteed by
the Constitution or laws- and thus were

not immune from being sued under §1983.

Further states, shortly thereafter Boyd Veenkant drafted a complaint, naming Jannett L. Cook as Defendant, and filed it with the 37th Judicial District Court, Warren, Michigan. Then hired Atty. Noel Lippman to represent Boyd Veenkant as Plaintiff. Atty. Lippman asked for two hundred dollars to take action and was advanced the two hundred dollars and Atty. Lippman took no action and let the case go default. Boyd Veenkant filed his complaint against Atty. Noel Lippman with the State Bar of Michigan and the State Bar of Michigan informed Boyd Veenkant that Atty. Noel Lippman had been disbarred from practicing law for five years.

Shortly thereafter, Boyd Veenkant gets a "AMENDED ANSWER TO COMPLAINT" from Jannett Cook's attorney, Atty. Donald

Wm. Sargent. Boyd Veenkant wrote to the 37th. Judicial District Court and asked for a copy of this Complaint that had been filed with this Court. Also Boyd Veenkant instructed the Court, no one had been hired or given permission to file such a complaint and to stop action upon this complaint at once. The court advanced a copy of the complaint to Boyd Veenkant and a letter stating , we will hold any further proceeding until we hear from you.

This Complaint forwarded to Boyd Veenkant by the 37th. District Court, had been signed by a Atty. Howard S. Siegrist, being Plaintiff's Attorney. This complaint was a fraudulent drafted complaint and konwingly made and filed it with the 37th. District Court, with intent that it be introduced in this pending Court case. For such a document to be draf-

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ted, Atty. Lippman had to of conspired with Atty. Howard S. Siegrist.

Michigan staute-Criminal conspiracy
Sec.1015 (1) A person is guilty of criminal conspiracy if with intent that conduct constituting an offense be performed , he agrees with 1 or more persons to engage in or cause the performance of such conduct. (C.L. 1970, Section 750.157

a) Cases in support- (e.g., Alderman v. People, 4 Mich. 414 (1857); People v. Arnold, 46 Mich. 268, 273, 9 N.W. 406 (1881); see also, People v. Rosen, 18 Mich. App. 457, 171 N.W. 2d 488 (1969).)

Federal Statutes- U.S. Code, Title 42, Section's 1983; 1985(3) and 1986. In

"Meaning of " PERSON" 56 L Ed 2d 895

ANNOTATION, SUPREME COURT'S VIEWS AS TO MEANING OF TERM "PERSON",AS USED IN STATUTORY OR CONSTITUTIONAL PROVISION. In, Monell v. Department of Social Services

(1978) 436 US 658, 56 L Ed 2d 611, 98 S
Ct 2018.

Also appling to Atty. Howard S. Siegrist's drafted and filed complaint with the 37th. District Court, is the following: Forgery in the second degree
Sec. 4006.(1) A person commits the crime
e of forgery in the second degree if, w-
ith intent to defraud, he falsely makes,
completes or alters a written instrument
which is or purports to be, or which is
calculated to become or to represent if
completed any of the following: (a) A
instrument which does or may evidence,
create, transfer, terminate, or otherwi-
se affect a legal right, interest, or -
status. (b) A public record, or an inst-
ument filed in a public office or with
a public employee. (It was.)

Michigan Statute- (C.L. 1970, Section

750.248). Cases in support- People v. Van Alstine, 57 Mich. 69, 23 N.W. 594 (1885). and e.g., People v. Long, 27 Mich. App. 385, 183 N.W. 2d 641 (1970).

TAMPERING WITH PHYSICAL EVIDENCE

Sec. 5045. (1) A person commits the crime of tampering with physical evidence if he either of the following: (b) Knowingly makes, presents or offers any false physical evidence with intent that it be introduced in a pending or prospective official proceeding. (An did.)

Mich. Statute- (C.L. 1970, Section 750.491). Ct. cases in support- People v. Coleman, 350 Mich. 268, 86 N.W. 2d 281 (1957); and People v. Boyd, 174 Mich. 321, 140 N.W. 475 (1913). -

Federal Statutes- U.S. Code, Title 42, Section 1983 and 1986. Case in support- Monell v. Department of Social (1978) 436 US 658, 56 L Ed 2d 611, 98

S Ct 2018.

This Petitioner then hired Atty. John A. Watts to represent him and Atty. John Watts filed with the 37th. Judicial District Court and with Jannett Cooks attorney, Donald Wm. Sargent, a "Motion to retain case appearing on "NO PROGRESS" calendar and notice of hearing with proof of service. File No. 13205.

Atty. Donald Wm. Sargent replied with a "ANSWER TOMOTIOM", sent a copy to the 37th. Judicial District Court and to Atty John Watts. This Petitioner refers to No. 2. and it states-"That the merchandise which is the subject matter of this suit was purchased by Stanley J.Kucznski on Sept. 1st,1961, Oct.1st.1962 and on Oct. 11, 1963." Petitioner first points out, Atty. Donald Wm. Sargent did not sign his name to this document. Second this

Petitioner still has his Company billing machine with the third copy's still within it, covering dates before Sept. 1st, 1961 and dates after Oct. 11, 1963 and there are no such dates listed in the Company billing machine as quoted in Atty. Donald Wm. Sargent's "ANSWER TO MOTION", that Stanley J. Kuczynski had purchased the merchandise which is the subject matter of this suit. This document and being Atty. Sargents "answer to motion" is covered by the following Mich. Statutes- Liability based upon the behavior of another: no defense Sec. 425. In any prosecution for an offense in which criminal liability is based upon the behavior of another person pursuant to this chapter, it is no defense that: (a) Such other person has not been prosecuted for or convicted of any offense based upon the behavior in question

or has been convicted of a different offense or degree of offense. (C.L. 1970, Section 767.39). Case in support- People v. Chapman, 62 Mich. 280, 28 N.W. 896 (1886).

Then- TAMPERING with physical evidence Sec. 5045. (1) A person commits the crime of tampering with physical evidence if he does either of the following:

(b) Knowingly makes, presents or offers any false physical evidence with intent that it be introduced in a pending or prospective official proceeding.

Mich. Statute- (C.L. 1970, Section 750.491) Cases in support- People v. Coleman, 350 Mich. 268, 86 N.W. 2d 281(1957) ; and People v. Boyd, 174 Mich. 321, 140 N.W. 475 (1913).

Then during this Motion called by this Petitioners attorney, John Watts, Atty. Donald Wm. Sargent made the very

same knowingly false perjury claim as stated in Atty. Sargents "answer to motion" under No. (2.), and that he had the receipts.

This is "PERJURY IN THE FIRST DEGREE Sec. 4905. (1) A person commits the crime of perjury in the first degree if in any official proceeding he makes a materially false statement, which he does not believe to be true, under an oath required or authorized by law.

Mich. Statute-(C.L.1970, Section 750.-423). The present case law is also in accord with Sections 4905-06 speaking of perjury as applying only to situations where the oath was authorized or required by law. (E.g. People v. Fox, 25 Mich. 492 (1872); and People v. Titmus, 102 Mich. 318, 60 N.W. 693 (1894).

FEDERAL STATUTES- U.S. Code, Title 42, 1983 and 1986. Case in support-

MONELL v. Department of Social Services (1978) 436 US 658, 56 L Ed 2d 611, 98 S Ct 2018. "MEANING OF "PERSON" 56 L Ed 2d 895 ANNOTAT SUPREME COURT'S VIEWS AS TO MEANING OF TERM "PERSON", AS USED IN STATUTORY OR CONSTITUTIONAL PROVISION.

Further states, when the 37th. Judicial District Court, called this Motion to be heard, asked by Petitioners Atty. John Watts, on or about April 13, 1978. Judge Sherman P. Faunce at the beginning of the hearing, substituted Jannett Cook's daughter, Lydia (Cook) DeWolf, which is covered by Mich. DCR 202.2 Substitution of Parties, for Defendant, Jannett L. Cook.

Further stated by Judge Sherman P. Faunce, "The only attorney's name I see here representing the Defendant is Howa-

rd Siegrist and to my knowledge he's still practicing law. REMARK- This was copied from the transcript purchased by this Petitioner from the 37th. Judicial District Court. QUESTION- Why? Yes why was the word DEFENDANT insurted to replace the word PLAINTIF, when Atty. Siegrist's complaint filed with the 37th. Judicial District Court, is drafted and states, Atty. Howard S. Siegrist is the Plaintiff's Attorney.

Judge Sherman P. Faunce has admitted he has Atty. Howard S. Siegrist's forged instrument in his possession and utters to be a fact. Petitioner applies the following Mich. Statute to this forged instrument in the possession of Judge Sherman P. Faunce. "CRIMINAL possession of a forged instrument in the second degree Sec. 4011. (1) A person commi-

ts the crime of criminal²⁶ possession of
a forged instrument in the second degree
if he possesses, utters, transfers, or
sells any instrument specified in Sect-
ion 4006 that is forged, with knowledge
that it is forged and with intent to
defraud. (2) Class D felony.

Mich. Statute- (C.L. 1970, Section 750.
248). Cases in support- People v. Mar-
ion, 29 Mich. 31 (1874). and People v.
Kimble, 60 Mich. App. 690, 223 N.W. 2d
26 (1975). NOTICE- The Court was given
a written notice by Petitioner, Boyd
Veenkant, that I never hired anyone or
gave anyone permission to file such a
complaint and to stop action at once up-
on this complaint, being the complaint
filed with the 37th. Judicial District
Court with Atty. Howard S. Siegrist,
claiming to be representing Plaintiff,
Boyd Veenkant.

Petitioner further states, he ordered a transcript of this "Motion" called to be heard on or about April 13, 1978 by Petitioners Atty. John Watts and asked for the claim made by Atty. Donald Wm. Sargent to the Court, that he had receipts marked paid in full, covering this merchandise and dates , as drafted in Atty. Sargent's 'answer' to motion' under No. 2 and filed with the 37th. Judicial District Court, but did not sign his name to the document.

The 37th. Judicial District Court in drafting up the transcript referred to above, removed Atty. Donald Sargent's claims about having receipts and etc., in the drafting of the transcript. When asked for a second time, the answer was, we sent you all the transcript.

This act is covered by- TAMPERING with physical evidence Sec. 5045.(1) A person

commits the crime of tampering with physical evidence if he either of the following: (a) Destroys, mutilates, conceals, removes or alters physical evidence with intent to impair its verity or availability in a pending or prospective official proceeding. (3) Class D felony. Mich. Statute- (C.L.1970, Section 750.4-91 ("mutilating, removing, etc. public records"); C.L. 1970, Section 750.388 ("removing property seized by legal process")). Cases in support-People v. Coleman, 350 Mich. 268, 86 N.W. 2d 281 (1957); People v. Boyd, 174 Mich. 321, 140 N.W. 475 (1913)). And the act of suppressing evidence has long been recognized as falling within this common law offense (see Perkins, Criminal Law, 499-500 (2nd ed., 1969)).

Further states, Judge Sherman P. Faun-

ce stated at this Motion hearing- "As far as I'm concerned, the case has got to die eventually and as far as I'm concerned it's dead. Motion denied.

Your Honor, Judge Faunce outright denied Boyd Veenkant to be represented by counsel, and also dismissed the Court case. Under Public Law 90-284, "§245. Federally protected activities and under "(2)"(B) and "(5)"(c), Judge Faunce being a 'law enforcement officer', denied Boyd Veenkant services and etc., administered by the State on Mich. Also refused to carry out the duties of his office and lawfully enforcing ordinances and laws of the State of Mich. and laws of the United States. In this case it covered personal property and covered under the fourteenth and fifth amendment to the Federal Constitution provides, "no

State shall*** deprive any person of life, liberty, or property" and "no person shall** deprived of life, liberty, or property, without due process of law", but that is just what the Courts and what Judge Sherman P. Faunce has done, denied Boyd Veenkant his personal property without due process of law and to protect a Defendant, who has admitted, as well as the Defendants sister , that Boyd Veenkants personal property was right down in the basement of the deceased Stanley Cook home at the time Boyd Veenkant went to pick it up. And the Defendants sister admitted it belonged to Boyd Veenkant. Therefore this Petitioner does not have to prove that the merchandise or personal property in question did belong to Boyd Veenkant and or that it was all right down in the deceased Stanley Cook home basement, when

Boyd Veenkant went to the deceased Stanley Cook home to pick up his personal property.

This Petitioner, Boyd Veenkant took his "CIVIL RIGHTS CASE" to the U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN", where the case and complaint was dismissed without a hearing.

Petitioner refers to 'FEDERAL REPORTER' book No. 313. 3.Civil Rights key 1. Statutory prerequisites to liability for depriving one of civil rights are an act by the defendant under color of State or local law & the deprivation of a right , privilege, or immunity secured by the Constitution & laws. 42 U.S.C.A. Sec. 19-83. 3. Federal Civil Procedure key 1742, Whether complaint states cause of action on which relief could be granted is question of law & just as issues of fact it must be decided after & not before Court

has assumed jurisdiction over controversy. 4. Federal Civil Procedure key 18-24. Court's dismissal of action under Civil Rights Act on its own motion & without giving plaintiff opportunity to be heard was plain error. Fed. Rules Civ. Proc. rule 12(h), 28 U.S.C.A.; 28 U.S.C.A. Sec. 1343; 42 U.S.C.A. Sec 1983, 1985(3) ; West's Ann. Cal. Code Civ. Proc. Sec. 1650-1690. Likewise the case was appealed to THE U.S. COURT OF APPEALS SIXTH CIRCUIT, where it was dismissed.

" A claim under the civil rights act expressly gives the District Court Jurisdiction, no matter how imperfectly the claim is stated." Harmon v. Superior Ct of the State of California, 307 F 2d 796, CA 9 (1962).

This Petitioner, Boyd Veenkant believe the time has come for this Court to enunciate a clear and definitive ruling

and or actions covering the "theft" of this Petitioner personal property and deny this Petitioner the right to "Due Process of Law", when the Defendant and her sister admit it was in the basement of the deceased Stanley Cook home, when this Petitioner, Boyd Veenkant went to pick it all up.

For these reasons, a writ of certiorari should issue to review the opinion and order of U.S. District Court for the Western District of Michigan and likewise by the U.S. COURT OF APPEALS, SIXTH CIRCUIT, covering personal property belonging to this Petitioner and admitted by the Defendant and her sister that it all was in the basement of the deceased Stanley Cook home, when this Petitioner went to pick it up after Stanley Cook's death and the defendant, Janett Cook, refused this Petitioner his

right to get it. Then³⁴ When this Petitioner got a Court Order for the Police to go to the Deceased Stanley Cook home to get this Petitioners personal property, theft had taken place and it was all removed from the deceased Stanley Cook home so the police couldn't recover this Petitioner, Boyd Veenkant's personal property and the Court's are denying this Plaintiff and or Petitioner his Constitutional Right to "Due process of Law".

Dated: Respectfully submitted,
Oct. 10, 1983. Boyd Veenkant, per se
Boyd Veenkant
P.O. BOX 115
Allegan, Michigan 49010-0115
(616) 673-4400

JANET K. YARLING
LOUIS J. CARUSO and
GEORGE H. WELLER, Assist. Atty. Gen.
MICHAEL T. LYNCH
HOWARD S. SIEGRIST, per se
NOEL L. LIPPMAN, per se

Of Counsel

REASONS FOR GRANTING THE WRIT

1. This Petitioners Civil Rights has been violated under 28 § 1343.

2. The fifth amendment to the Federal Constitution provides, in part, that "no person shall be ** deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation". A similar injunction is incorporated into the fourteenth amendment: "no State shall *** deprive any person of life, liberty, or property, without due process of law".

3. The Defendant's sister and being Mrs. Geneviene Virgilio instructed this Petitioner, that all his personal property was right down in the basement as of now, when this Petitioner went to the deceased Stanley Cook home to pick it up.

4. The defendant, Jannett Cook, also

admitted the merchandise in question was down in the basement of the deceased Stanley Cook home when this Petitioner went back to pick up his personal property, but refused to let this Petitioner have it. But by the time a Court Order was got and the police went to get this Petitioners personal property, it all had been removed from the home. "Theft."

5. The 37th. Judicial District Court removed, or etc., that part of the transcript were Atty. Donald Wm. Sargent under oath as a attorney, that he had marked paid receipts covering the merchandise in question at the Motion hearing were Atty. John Watts asked to represent this Plaintiff, when this Plaintiff ordered a copy of the transcript of that Motion hearing. And in the "answer to Motion", filed with the Court and with the same claim, Atty. Sargent did not

sign the document.

But Atty. Donald Wm. Sargent, representing Defendant, Mrs. Jannett Cook, is admitting Mrs. Jannett Cook has the merchandise in question. Also claims to have receipts for the merchandise in question, but not only refused to sign the document claim filed with the Court, but refuses to produce a single receipt.

6- This Petitioners, State of Michigan Statutes and Federal Statutes were violated.

7- All named Respondents for exception of the original Defendant, Jannett L. Cook and now Lydia (Cook) DeWolf, are "Law Enforcement Officers", and having power to prevent the commission of the same, refused to do..shall be liable.

8-All named Respondents fall within the "meaning of person" under 56 L Ed 2d

895 ANNOTATION, Supreme Court's views as to meaning of term "person" as used in Statutory or Constitutional provision.

Under the CIVIL RIGHTS ACT of 1871(42 - USCS §1983). Ct. case in support-Monell V. Department of Social Services (1978) 436 US 658, 56 L Ed 2d 611, 98 S Ct 2018.

CONCLUSION

This Petitioner believe the time has come for this Court to enunciate a clear and definitive ruling on the subject matter. Defendant, Mrs.Jannett Cook's sister, Mrs. Geneviene Virgilio instructed Boyd Veenkant when he went to pick up his personal property, that it was all right down in the basement now. Jannett Cook also admitted it was in the basement, but refused to give it to Boyd Veenkant. Then Jannett Cook committed the act of "Larceny"(C.L.1970, Section 750.356), when

Jannett Cook removed Boyd Veenkant's personal property from the deceased Stanley Cook home, so the law could not recover this personal property by a Court Order and refuse to state where it is.

Even Mrs. Jannett Cook's attorney, Donald Wm. Sargent, admit's Jannett Cook has this Boyd Veenkant's personal property, not only in a Court filed document, but under oath, but is claiming to have dated and paid receipts covering this property. But refused to sign the written Court filed document & the Court has removed from the Court transcript, the claim made under oath to the Court by Atty. Donald Wm. Sargent, that he has these dated and marked receipts. Atty. Sargent, also refuses to produce a single receipt, and the Court system has denied Boyd Veenkant "Due process of law", and his Constitutional Rights

, and his CIVIL RIGHTS ACT'S, to prove in Court all the State of Michigan Statutes and Federal Statutes, the named Respondents have committed to protect Mrs. Jannett L. Cook of the act of "Larceny" in the removing or having removed, Boyd Veenkant's personal property out of the deceased, Stanley Cook home and refusing to return Boyd Veenkant's personal property to him.

That up to now, the U.S. Court system is discriminating against Boyd Veenkant as a U.S. Citizen and his Constitutional Rights, acting in per se .

The end of justice has come and I would think it would be very appropriate at this time, that a Judgement as asked, plus all Costs and etc., be issued now;

Thank You:

Respectfully submitted
Boyd Veenkant, per se
Boyd Veenkant
P.O. BOX 115,

Allegan, Mi. 49010-0115 (616)673-4000

A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN,

No. K 81-309

BOYD VEENKANT, per se

Plaintiff,

V.

JANNETT L. COOK (Kuczynski);
Atty. DONALD WM. SARGENT;
Atty. NOEL L. LIPPMAN;
Atty. HOWARD S. SIEGRIST;
Judge, SHERMAN P. FAUNCE,

Defendants.

Removed from a State Court by
28 §1343. The State Court denied
this Plaintiff to be represented
by counsel, and therefore denied
him due process of law, on or ab-
out April 13, 1978. Filed in U.S.
District Court on or about August
14, 1981 in ,per se.

Dist. Ct. No. 13205-Sherman P.
Faunce, Judge.

Submitted August 14, 1981-Opinion 2-7-83

Before RICHARD A. ENSLEN, U.S. Dis. Jud.

A- 41.

OPINION

NOTICE- Due to it's length it is being furnished separately.

Further states, this OPINION was handed down without a hearing. Which denies this Plaintiff- Appellant, due process of law.

ORDER

In accordance with the Opinion in the above entitled action, issued February 4th, 1983,

IT IS HEREBY ORDERED that Defendants' Motions to Dismiss are granted, and the Complaint is hereby dismissed with prejudice.

DATED: 2/4/83

Richard A. Enslen
RICHARD A. ENSLEN
US District Judge

3

B

No. 83-1183

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
SEPT. 2, 1983
JOHN P. HEHMAN,
CLERK
O R D E R

BOYD VEENKANT,

Plaintiff-Appellant,

V.

JANNETT L. COOK (Kuczynski),
Atty. DONALD Wm. SARGENT,
Atty. NOEL L. LIPPMAN,
Atty. HOWARD S. SIEGRIST,
Judge. SHERMAN P. FAUNCE,

Defendants-Appellees.

BEFORE: LIVELY and MERRITT, Circuit Judges;
and PECK, Senior Circuit Judge

This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the record and briefs, this panel agrees unanimously that oral argu-

~~ment~~ is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiff appeals the district court order entered February 7, 1983, dismissing his civil rights action. Having carefully examined the record and briefs, this Court concludes the district court did not err in disposition of this case. Accordingly, for the reasons stated in the district court opinion entered February 7, 1983 the order of the district court is hereby affirmed. Rule 9(d)(2), Rules of the Sixth Circuit.

Based upon the record in this case and the briefs filed, we are convinced that this appeal is frivolous. This appeal amounts to little more than a continued abuse of process which raises no colorable legal or factual basis for the relief sought. It is totally lacking in
B -44.

5 B 83-1183
merit, framed with no relevant support-
ing law, conclusory in nature, and utter
nonsense. In fact this Court notes
unfavorably the pattern of frivolous li-
tigation perpetuated by plaintiff.

See Veenkant v. Gurn, Case No. 82-15-
82 (6th Cir. 1983); Veenkant v. Wesler,
Case No. 82-1584 (6th Cir. 1983); Veen-
kant V. Burdick, Case No. 82-1583 (6th
Cir.1983); Veenkant V. Corsiglia, Case
No. 82-1824 (6th Cir. 1983)(unpublished
ed opinion).

Pursuant to Federal Rule of Appell-
ate Procedure 38, we award double costs
and just attorneys fees to appellees.

ENTERED BY ORDER OF THE COURT

John P. Hehman/
Clerk

83-635

NOV 3 1983

ALEXANDER L. STEVAS,
CLERK

No. 83-1183

IN THE SUPREME COURT OF THE UNITED STATES

January Term, 1984

No. _____

BOYD VEENKANT, per se.,
Petitioner,

-VS -

JANNETT L. COOK (Substitution
of Parties by GCR Rule 202.2
to LYDIA (COOK) DeWOLF), et al.,
Respondents.

SUPPLEMENTAL APPENDIX TO PETITION
FOR A WRIT OF CERTIORARI

To The Supreme Court of the United States

from

U.S. Court of Appeals, Sixth Circuit.

BOYD VEENKANT, Per se.,
P.O. BOX 115
ALLEGAN, MI. 49010-0115
1 (616) 673-4400

JANET K. YARDING,
LOUIS J. CARUSO, and
GEORGE H. WELLER, Assist. Atty. Gen.,
MICHAEL T. LYBCH,
HOWARD S. SIEGRIST, per se.,
NOEL L. LIPPMAN, per se.,
Of Counsel.

OPINION

" " NOTICE- This is cover by-Federal Civil Procedure key 1824. Courts dismissal of action under Civil Rights Act on its own motion and without giving plaintiff opportunity to be heard was plain error.

Fed. Rules Civ. Proc. rule 12 (h),
42 U.S.C.A. Sec Sec. 1983,1985(2). " "

This case was filed by Plaintiff in propria persona on August 14,1981, and is presently before the Court on Motions to Dismiss by each of the Defendants. The Complaint relates a string of events beginning with an alleged agreement between Plaintiff and Stanley Cook (a/k/a Stanley Kuczynski). According to Plaintiff, he had agreed to allow Mr. Cook to sell some guns and related merchandise for Plaintiff, and had given these goods to Mr. Cook for sale purposes, sometime
P-1.

prior to Mr. Cook's death in 1967. Plaintiff alleges that although he signed "dealer cost sheets" and marked them as "paid," this was done only to avoid problems Mr. Cook might have if the guns were discovered in his possession, and was not intended as receipts of sale. Plaintiff alleges that he later asked Cook to return the merchandise, but that Cook was killed before he returned the property to Plaintiff. This action arises out of Plaintiff's unsuccessful efforts to recover the property or the value thereof, which he claims is rightfully his.

Defendant Jannette Cook was the widow of Stanley Cook; she is now deceased. The other Defendants are lawyers and a judge who were involved in a state court action brought by Plaintiff against Jannette Cook. Defendant Sargent was also involved in the probate of the Sta-

Page - 2.

-nley Cook estate.

It appears from Plaintiff's Complaint and exhibits attached thereto that on June 9, 1967 Jannette Cook filed a petition for the probate of Stanley Cook's will in the Macomb County Probate Court, alleging that the personal estate of Stanley Cook was some \$1,000. In July of that year Plaintiff filed a claim in the Probate Court for the value of his property. However, on the petition of Defendant Attorney Donald Sargent, stating that there were no assets in the estate, the probate petition was dismissed on September 16, 1968. Plaintiff alleges that these actions were taken despite indications which led Plaintiff to believe that Mr. Cook had assets at the time of his death, and despite the debt allegedly owing to Plaintiff by Mr. Cook at the time of his death.

Plaintiff alleges that in January 1969, and again on an unspecified later date, he went to the Cook residence to demand the return of his property. He alleges that both Defendant Cook and her sister admitted to having the property in the house but did not turn it over to Plaintiff; Defendant Cook denied that the property belonged to the Plaintiff. Plaintiff alleges that he then sent "the law" to recover the property for him, but by that time it had been removed from the house.

Plaintiff then filed a Complaint against Jannette Cook in the District Court for Macomb County, apparently on or about February 12, 1969. Plaintiff alleges that in August of 1969 he paid Defendant Attorney Noel Lippman a \$200 retainer to represent him in this state court action. According to Plaintiff, h-

Page - 4.

-owever, Lippman took no action on the case, and Plaintiff filed a complaint with the Michigan State Bar Association. The State Bar Grievance Board then advised Plaintiff by letter in February 1975 that Lippman had been suspended from the practice of law for five years as of December, 1974. Plaintiff alleges that despite this, Lippman wrote to him on March 12, 1975, asking Plaintiff to come in to discuss his case. The Complaint does not disclose what happened at that time, except that it appears that an Amended Complaint was filed in the Macomb County District Court on March 24, 1975, signed by Defendant Attorney Howard S. Siegrist on behalf of Plaintiff. Plaintiff alleges that he never engaged Siegrist to represent him, and that he had no knowledge of the amendment of his Complaint until he received a copy of the

Page - 5.

Amended Answer at the end of October 1975. At that time, Plaintiff wrote to the Macomb County District Court inquiring about the status of his action and advising the Court that neither the Amended Complaint nor Siegrist's appearance was authorized by Plaintiff. Plaintiff alleges that the Amended Complaint was fraudulent.

Plaintiff alleges that he was notified sometime later that his case would be dismissed if no action was taken on it. Plaintiff states that he then hired Attorney John Watts, who moved for the retention of the case on the grounds that Plaintiff had been hampered in obtaining representation. In response, Defendant Attorney Sargent filed an answer which stated that the merchandise in question had been purchased by Mr. Cook between 1961 and 1963; that Plaintiff h-

Page - 6.

-ad filed a claim in probate; and that any claim should be heard in probate. On April 18, 1978, over nine years after the action was originally filed by Plaintiff, Defendant District Court Judge Sherman P. Faunce II heard and denied Plaintiff's Motion for Retention. Over three years later, Plaintiff filed this federal action.

I. Jannette L. (Kuczynski) Cook

On November 24, 1981, Lydia Helen DeWolf, personal representative of the estate of Jannette Cook, specially appeared in this action claiming that service on Jannette Cook was ineffective; that the statute of limitations bars any action by Plaintiff against this Defendant, her estate or personal representative; that venue in the Western District of Michigan is improper; and that for various reasons Plaintiff fails to state a

claim as to this Defendant or her successors.

Plaintiff named Jannette Cook as the Defendant in this action filed August 14, 1981, although Cook had died on April 20, 1980. (Exhibit A, Special Appearance and Motion to Dismiss...). Plaintiff states that upon learning of Defendant Cook's death, he obtained information that Attorney Stephen Schoenberg represented the estate, and Plaintiff sought to serve that attorney. Defendant confirms that the Summons and Complaint were delivered to the offices of Cummings, McClorey, Davis & Acho, P.C., on that date, but argues that such service was improper. The Court agrees that Defendant Cook has not effectively been made a party to this action.

A claim for a debt against the estate of Jannette Cook might have been brought.

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-ought against her personal representative. See MCLA §§ 700.701(1); 700.741. Or, if the action had been pending against Defendant Cook at the time of her death, the personal representative could have been served and admitted to defend the action. MCLA § 700.742; FRCP 25(a). However, service of the Summons and Complaint on the attorney for the estate is ineffective here for two reasons: Janette Cook could not be sued because she was dead (See FRCP 17(b); MCLA § 600.20 51(1)); and service on an agent of a party is not sufficient unless the agent is specifically authorized to accept service or is appointed by law for that purpose. (FRCP 4(d)(1)). Plaintiff's Motion for Substitution of Parties pursuant to FRCP 25(a) is of no assistance to him in this case, because:

The rule presupposes that substitution
Page - 9.

tion is for someone who was a party to a pending action. Substitution is not possible if one who was named as the party in fact died before the commencement of the action. 7A Wright and Miller, Federal Practice and Procedure: Civil § 1951, p 638.

Because this Defendant was never effectively made a party to this lawsuit, dismissal of Plaintiff's Complaint as to Defendant Jannette Cook is appropriate.

In addition to the failure of Plaintiff to make Defendant Cook, her personal representative, or her estate a Defendant in this action, the statute of limitations barred Plaintiff's claims against Defendant Cook at the time this lawsuit was filed, and clearly bar any action against Defendant Cook's personal representative or estate at the present time. It is difficult to discern the

legal grounds for Plaintiff's claims against Defendant Cook, but reading the Complaint in the light most favorable to Plaintiff, it appears that Plaintiff has sought to allege claims of fraud; conversion; and deprivation of property without due process of law, in violation of 42 USC §§ 1983, 1985(3), and 1986.¹

The statute of limitations in Michigan for the tort of fraud is either three or six years, depending upon whether or not there is injury to person or property.

MCLA § 600.5813; MCLA § 5805(8); See Case v Goren, 43 Mich App 673 (1972).

A conversion claim must be brought within three years. MCLA §5805(8); Janiszowski v Behrmann, 345 Mich 8 (1956).

The statute of limitations in § 1986 actions is defined by the statute itself, and is one year. And generally, claims under §§ 1983 and 1985(3) have been fou-

-nd to be governed by Michigan's three year statute of limitations. See Gordon v City of Warren, 579 F 2d 386 (CA 6 19 79); Krum v Sheppard, 255 F Supp 994 (WD Mich 1966), aff'd 407 F 2d 490.

Plaintiff's claim against Defendant Cook arise out of Defendant's alleged refusal to return Plaintiff's property and the alleged removal of the property from her house sometime around 1969, and Defendant Cook's statements in the petition for probate filed in 1968. Even a six year statute of limitations had long expired when Plaintiff filed this action in 1981.

Clearly Plaintiff will be unable at this time to bring any claim against Defendant Cook's personal representative or estate on these grounds. Plaintiff argues that the instant action is merely a continuation of his state court lawsuit, which was not time barred when commenced

in 1969. However, the present action was commenced originally in federal court in 1981. The fact that it is based on the same circumstances does not make it the same action for statute of limitations purposes.

Because Defendant Cook was never properly made a party Defendant to this action, and because it appears from the face of Plaintiff's Complaint that claims against this Defendant or her successors are time barred by the applicable statutes of limitations, Plaintiff's claims against Defendant Cook are dismissed with prejudice. ²

II. Judge Sherman Faunce, II

Defendant Michigan District Judge Sherman P. Faunce, II filed a Motion to Dismiss Plaintiff's claims as to him, on October 18, (1981), 1981. Defendant Faunce argues that Plaintiff's Complaint m-

Page - 13.

-ust be dismissed because it is barred by the statute of limitations, and because Defendant is immune from liability.

It is clear from the face of the Complaint that Plaintiff's allegations as to this Defendant involved conduct which occurred on or before April 18, 1978, when Defendant Faunce denied Plaintiff's Motion for Retention of his state court action and dismissed the cause for lack of progress. Because this was an action taken by Defendant in his judicial capacity, he is absolutely immune from liability for damages even if his ruling was in error. Stump v Sparkman, 435 US 349, 359 (1978). In addition, it appears that any claims against this Defendant for violations of the civil rights statutes are barred by the statute of limitations, since this action was filed over three years after the judge's 1978 ruling.

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ng. Plaintiff's Complaint as to Defendant Faunce is therefore dismissed with prejudice.

III. NOEL LIPPMAN

Defendant Lippman has also moved for dismissal of Plaintiff's Complaint on the grounds that the applicable statutory periods of limitation have expired so as to preclude any claims by Plaintiff against him.

It appears that Defendant Lippman first became involved in the dispute between Plaintiff and Defendant Cook when Plaintiff retained Lippman to represent him in state court, in August of 1969. The Complaint contains no allegations of any continued relationship between Plaintiff and this Defendant after March 1975. However, assuming that Plaintiff's claims against Defendant arise out of the dismissal of his state court action

in 1978, the Court will view that date as the time at which Plaintiff's cause of action against this Defendant accrued. Reading the Complaint in the light most favorable to Plaintiff, the Court will assume that Plaintiff intends to state claims of limitations in actions for malpractice is two years. MCLA §600.5805 (4). As has been noted above, the relevant statutes of limitations for civil rights actions allow a plaintiff no more than three years to file his action.

Since more than three years had expired at the time this action was commenced, Plaintiff's claims against this Defendant are time barred, and his complaint as to this Defendant is dismissed with prejudice.³

IV. Howard S. Siegrist

Defendant Siegrist filed his Motion to Dismiss on October 26, 1981, also on
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the grounds that Plaintiff's action as to him is barred by the applicable statutes of limitations. Defendant Siegrist is the attorney whose name appears as Plaintiff's representative on an amended complaint filed in Plaintiff's state court action on March 24, 1975. While Plaintiff has not clearly alleged how, if at all, he was injured by the filing of the amended complaint, the Court will assume for the purpose of this motion that Plaintiff has stated claims of civil rights violations and fraud against this Defendant. Because the Complaint in this action was filed more than six years after the filing of the amended complaint, Plaintiff is barred from bring this action against Defendant Siegrist, and his Complaint as to this Defendant is dismissed with prejudice.

V. Donald William Sargent

Page - 17.

Defendant Attorney Sargent represented Defendant Cook in Plaintiff's state court proceedings, and also requested that the probate petition for Stanley Cook be dismissed. He has moved for dismissal solely on the basis of improper venue, pursuant to 28 USC § 1406(a).

It does appear that venue for this action does not properly lie in the Western District of Michigan. All of Defendants appear to reside in the Eastern District of Michigan; the probate of Stanley Cook's estate took place in Eastern Michigan; Plaintiff's state court action was brought in the Eastern District of Michigan; and Defendant Cook resided in the Eastern District of Michigan when she allegedly converted Plaintiff's property. Because this is an action which is not, and could not be, based solely upon diversity jurisdiction, venue is proper

only in the Eastern District of Michigan
. 28 USC § 1391(b).

28 USC § 1406(a) provides that where a case is filed in the wrong district, the Court may dismiss the action, or "if it be in the interest of justice" the Court may transfer the case to the district in which the action should have been brought. In this case, while Defendant Sargent has not moved for dismissal for failure to state a claim, or because the statute of limitations bars the action, it appears that either of these defenses would result in dismissal with prejudice against Plaintiff. For that reason, it would not be in the interest of justice to transfer this action to the Eastern District of Michigan and Plaintiff's action against Defendant Sargent is therefore dismissed. And because it appears from the face of the Complaint

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-nt that Plaintiff's civil rights claims against this Defendant are barred by the statute of limitations, and that Plaintiff fails to state a cause of action for fraud against this Defendant, the dismissal is with prejudice.

VI. Conclusion

For the reasons set forth above, Plaintiff's Complaint is dismissed with prejudice as to all Defendants. ⁴ Because dismissal is appropriate, it is not necessary to decide Plaintiff's Motions for Summary Judgment, filed October 19 and 23, 1981. A careful review of those motions does not reveal any basis for denying the motions to dismiss, nor does it appear that summary judgment could have been granted in Plaintiff's favor. Plaintiff also requests in a motion filed October 19, 1981, that this Court convene a grand jury to review the alleged

misconduct of Defendant Lippman. Two grand juries are currently in session in this District, obviating the need for the Court to consider this motion. If Plaintiff wishes to get a Complaint before the grand jury, he must go through the United States Attorney's Office. That office will only refer cases to the grand jury where there is a report from an investigative agency demonstrating evidence of criminal activity within this District. Plaintiff is therefore directed to the Federal Bureau of Investigation to seek investigation of any claims.

Dated: Feb.4,1983. Richard A. Enslen
Richard A. Enslen
US District Judge

FOOTNOTES

¹Plaintiff's allegations of criminal conduct, scattered throughout his Complaint, are of course outside the scope of this Court's jurisdiction in a civil

action, and are not further considered. Plaintiff has also alleged violations of 42 USC §1988, but that section does not set forth an independent cause of action. Rather, it functions as a complement to the other civil rights provisions. See Moor v Alameda County, 411 US 693, 702 (1973).

²Because these issues are dispositive of Plaintiff's claims against Defendant Cook, the Court need not discuss Defendant's other proposed grounds for dismissal. However, the Court notes that it does appear that venue does not lie in the Western District of Michigan, and that Plaintiff has not adequately alleged a claim of fraud against this Defendant.

³Plaintiff has alleged in his answer to Defendants motion, that Defendant's affidavit is made in bad faith and therefore Plaintiff is entitled to summary

page - 22.

judgment. Grant of summary judgment is not the appropriate remedy when affidavits are submitted in bad faith. FRCP 56 (g). Moreover, Plaintiff has not demonstrated how Defendant has in bad faith stated facts with specific regard to this motion. In fact, the basis of this motion is Plaintiff's own Complaint. Any bad faith which may have occurred during the course of the attorney-client relationship between Plaintiff and this Defendant, does not affect the merits of Defendant's arguments in the instant motion.

⁴ While dismissal of this action is largely based upon statute of limitations grounds, it also appears that this action was commenced in an improper venue; the presence of this Court's jurisdictional minimum of damages, is likewise

dubious. Moreover, while this Opinion assumes for the purpose of the motions that Plaintiff states claims against the Defendants, it is not at all clear that that is the case.

"" PREJUDICE - IN LAW, without dismissal of or detriment to a legal right, claim, or the like.

A opinion held in disregard of facts that contradict it; unreasonable bias ""

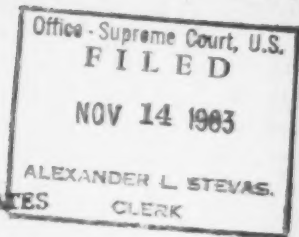
83-635

No. 83-1183

In The

SUPREME COURT OF THE UNITED STATES

January Term, 1984



BOYD VEENKANT,

Petitioner

v

JANNETT L. COOK

Atty: DONALD WM. SARGENT

Atty: NOEL L. LIPPMAN

Atty: HOWARD S. SIEGRIST

Judge: SHEPMAN P. FAUNCE,

Respondents

BRIEF IN OPPOSITION TO
PETITION FOR CERTIORARI

CUMMINGS, McCLOREY, DAVIS & ACHO, P.C.

33900 Schoolcraft, Suite G-1

Livonia, Michigan 48150

(313) 261-2400

Attorneys for Respondent, Jannett L. Cook

By: BERNARD P. McCLOREY (P-17312) and

JANET L. YARLING (P-32489)

QUESTIONS PRESENTED

The Respondent is not clear as to what questions the Petitioner raises but believes it to be:

Were Petitioner's Civil Rights violated by denial of due process of law?

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This Court is without jurisdiction to review the judgment submitted due to the lack of any important FEDERAL QUESTIONS AND DUE TO THE DISTRICT COURT'S RELIANCE UPON ADEQUATE, INDEPENDENT STATE GROUNDS AND FEDERAL RULES OF CIVIL PROCEDURE.	2
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No. 83-1183

In The

SUPREME COURT OF THE UNITED STATES

January Term, 1984

- - - - -

BOYD VEENKANT,

Petitioner

v

JANNETT L. COOK

Atty: DONALD WM. SARGENT

Atty: NOEL L. LIPPMAN

Atty: HOWARD S. SIEGRIST

Judge: SHEPMAN P. FAUNCE,

Respondents

- - - - -

2

**BRIEF IN OPPOSITION TO
PETITION FOR CERTIORARI**

- - - - -

STATEMENT OF FACTS

Respondent relies on the facts as set forth in the opinion of the U.S. District Court for the Western District issued February 7, 1983.

ARGUMENT**I.**

THIS COURT IS WITHOUT JURISDICTION TO REVIEW THE JUDGMENT SUBMITTED DUE TO THE LACK OF ANY IMPORTANT FEDERAL QUESTIONS AND DUE TO THE DISTRICT COURT'S RELIANCE UPON ADEQUATE, INDEPENDENT STATE GROUNDS AND FEDERAL RULES OF CIVIL PROCEDURE.

Rule 17 of the Supreme Court Rules sets forth in general the type of cases proper

for review by the Supreme Court. This case in no way meets the criteria for a review by this Honorable Court.

LYDIA DEWOLF specially appeared in this action in the U.S. District Court and brought a Motion to Dismiss and to Quash Service. She claimed:

- 1). service was ineffective under FRCP 4(d)(1) and FRCP 17(b);
- 2). the Statute of Limitations of Michigan bars any action against JANNETT COOK, her estate or her personal representative;
- 3). venue was improper; and
- 4). Plaintiff failed to state a claim as to JANNETT COOK, or her successors.

The DISTRICT COURT, by its opinion and order of February 7, 1983 found that:

- 1). Defendant COOK has not effectively been made a party to this action;
- 2). the Statute of Limitations barred Plaintiff's claim against Defendant COOK and dismissed Plaintiff's claims against her

with prejudice. In a footnote, the Court noted that "it does appear that venue does not lie in the Western District of Michigan, and that Plaintiff has not adequately alleged a claim of fraud against this Defendant."

Upon appeal to the U.S. Court of Appeals, Sixth Circuit, Appellee COOK requested that the appeal be handled as a frivolous appeal and requested that it be dismissed. The appeal was dismissed as frivolous and the appellees were awarded double costs, amounting to One Hundred Twenty-six (\$126.00) Dollars, and just attorney fees in the amount of Three Thousand (\$3,000.00) Dollars, which remains unpaid.

This Petition for Writ of Certiorari is one more effort on the Petitioner's part to continue his abuse of process against the Respondents and to cause this Honorable Court and the Respondents to waste a lot of valuable time and money in considering it. The District

Court did not err in rendering its decision and the Court of Appeals recognized this in its order.

Therefore, Respondent COOK submits that this Court is without proper jurisdiction to review the opinion rendered by the U.S. District Court for the Western District of Michigan, and affirmed by the U.S. Court of Appeals, Sixth Circuit. Thus, the Petition for Certiorari should be denied.

CONCLUSION

The judgment sought to be reviewed in this matter rests upon questions of state law and federal procedure, wherein the action was dismissed based on the pleadings filed. There was no abuse of discretion by the lower courts in the rendering of their decisions nor was this a denial of due process to the Petitioner.

WHEREFORE, Respondent COOK prays this

Honorable Court deny this Petition for
Writ of Certiorari.

CUMMINGS, McCLOREY, DAVIS & ACHO, P.C.

BERNARD P. McCLOREY (P-17312)

JANET K. YARLING (P-32489)
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Livonia, Michigan 48150
(313) 261-2400

Dated: November 8, 1983

APPENDIX

I

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BOYD VEENKANT,

Plaintiff,

File No. K 81-309

v

JANNETTE L. COOK (Kuczyniski);
ATTORNEY DONALD WILLIAM SARGENT;
ATTORNEY NOEL L. LIPPMAN; ATTORNEY
HOWARD S. SIEGRIST; SHERMAN FAUNCE,
37th DISTRICT COURT JUDGE,

Defendants.

OPINION

This case was filed by Plaintiff in propria persona on August 14, 1981, and is presently before the Court on Motions to Dismiss by each of the Defendants. The Complaint relates a string of events beginning with an alleged agreement between Plaintiff and Stanley Cook (a/k/a Stanley Kuczynski). According to Plaintiff, he had agreed to allow Mr. Cook to sell some guns and related merchandise for Plaintiff, and had given these goods to Mr. Cook for sale purposes, sometime prior to Mr. Cook's death in 1967. Plaintiff alleges that although he signed "dealer cost

sheets" and marked them as "paid," this was done only to avoid problems Mr. Cook might have if the guns were discovered in his possession, and was not intended as receipts of sale. Plaintiff alleges that he later asked Cook to return the merchandise, but that Cook was killed before he returned the property to Plaintiff. This action arises out of Plaintiff's unsuccessful efforts to recover the property or the value thereof, which he claims is rightfully his.

Defendant Jannette Cook was the widow of Stanley Cook; she is now deceased. The other Defendants are lawyers and a judge who were involved in a state court action brought by Plaintiff against Jannette Cook. Defendant Sargent was also involved in the probate of the Stanley Cook estate.

It appears from Plaintiff's Complaint and exhibits attached thereto that on June 9, 1967 Jannette Cook filed a petition for the probate

of Stanley Cook's will in the Macomb County Probate Court, alleging that the personal estate of Stanley Cook was some \$1,000. In July of that year Plaintiff filed a claim in the Probate Court for the value of his property. However, on the petition of Defendant Attorney Donald Sargent, stating that there were no assets in the estate, the probate petition was dismissed on September 16, 1968. Plaintiff alleges that these actions were taken despite indications which led Plaintiff to believe that Mr. Cook had assets at the time of his death, and despite the debt allegedly owing to Plaintiff by Mr. Cook at the time of his death.

Plaintiff alleges that in January 1969, and again on an unspecified later date, he went to the Cook residence to demand the return of his property. He alleges that both Defendant Cook and her sister admitted to having the property in the house but did not turn it over

to Plaintiff; Defendant Cook denied that the property belonged to the Plaintiff. Plaintiff alleges that he then sent "the law" to recover the property for him, but by that time it had been removed from the house.

Plaintiff then filed a Complaint against Jannette Cook in the District Court for Macomb County, apparently on or about February 12, 1969. Plaintiff alleges that in August of 1969 he paid Defendant Attorney Noel Lippman a \$200 retainer to represent him in this state court action. According to Plaintiff, however, Lippman took no action on the case, and Plaintiff filed a Complaint with the Michigan State Bar Association. The State Bar Grievance Board then advised Plaintiff by letter in February 1975 that Lippman had been suspended from the practice of law for five years as of December, 1974. Plaintiff alleges that despite this, Lippman wrote to him on March 12, 1975, asking Plaintiff to come in to discuss his

case. The Complaint does not disclose what happened at that time, except that it appears that an Amended Complaint was filed in the Macomb County District Court on March 24, 1975, signed by Defendant Attorney Howard S. Siegrist on behalf of Plaintiff. Plaintiff alleges that he never engaged Siegrist to represent him, and that he had no knowledge of the amendment of his Complaint until he received a copy of the Amended Answer at the end of October 1975. At that time, Plaintiff wrote to the Macomb County District Court inquiring about the status of his action and advising the Court that neither the Amended Complaint nor Siegrist's appearance was authorized by Plaintiff. Plaintiff alleges that the Amended Complaint was fraudulent.

Plaintiff alleges that he was notified sometime later that his case would be dismissed if no action was taken on it. Plaintiff states that he then hired Attorney John Watts, who moved for the retention of the case on the

grounds that Plaintiff had been hampered in obtaining representation. In response, Defendant Attorney Sargent filed an answer which stated that the merchandise in question had been purchased by Mr. Cook between 1961 and 1963; that Plaintiff had filed a claim in probate; and that any claim should be heard in probate. On April 18, 1978, over nine years after the action was originally filed by Plaintiff, Defendant District Court Judge Sherman P. Faunce, II heard and denied Plaintiff's Motion for Retention. Over three years later, Plaintiff filed this federal action.

I. Jannette L. (Kuczynski) Cook

On November 24, 1981, Lydia Helen DeWolf, personal representative of the estate of Jannette Cook, specially appeared in this action claiming that service on Jannette Cook was ineffective; that the statute of limitations bars any action by Plaintiff

against this Defendant, her estate or personal representative; that venue in the Western District of Michigan is improper; and that for various reasons Plaintiff fails to state a claim as to this Defendant or her successors.

Plaintiff named Jannette Cook as the Defendant in this action filed August 14, 1981, although Cook had died on April 20, 1980. (Exhibit A, Special Appearance and Motion to Dismiss. . .). Plaintiff states that upon learning of Defendant Cook's death, he obtained information that Attorney Steven Schoenberg represented the estate, and Plaintiff sought to serve that attorney. Defendant confirms that the Summons and Complaint were delivered to the offices of Cummings, McClorey, Davis & Acho, P.C., on that date, but argues that such service was improper. The Court agrees that Defendant Cook has not effectively been made a party to this action.

A claim for a debt against the estate of

Jannette Cook might have been brought against her personal representative. See MCLA §701(1); 700.741. Or, if the action had been pending against Defendant Cook at the time of her death, the personal representative could have been served and admitted to defend the action. MCLA §700.742; FRCP 25(a). However, service of the Summons and Complaint on the attorney for the estate is ineffective here for two reasons: Jannette Cook could not be sued because she was dead (See FRCP 17(b); MCLA §600.2051(1)); and service on an agent of a party is not sufficient unless the agent is specifically authorized to accept service or is appointed by law for that purpose. (FRCP 4(d) (1)). Plaintiff's Motion for Substitution of Parties pursuant to FRCP 25(a) is of no assistance to him in this case, because:

The rule presupposes that substitution is for someone who was a party to a pending action. Substitution is not possible if one who was named as the party in

fact died before the commencement of the action. 7A Wright and Miller, Federal Practice and Procedure: Civil §1951, p 638.

Because this Defendant was never effectively made a party to this lawsuit, dismissal of Plaintiff's Complaint as to Defendant Jannette Cook is appropriate.

In addition to the failure of Plaintiff to make Defendant Cook, her personal representative, or her estate a Defendant in this action, the statute of limitations barred Plaintiff's claims against Defendant Cook at the time this lawsuit was filed, and clearly bar any action against Defendant Cook's personal representative or estate at the present time. It is difficult to discern the legal grounds for Plaintiff's claims against Defendant Cook, but reading the Complaint in the light most favorable to Plaintiff, it appears that Plaintiff has sought to allege claims of fraud; conversion; and deprivation of property without

due process of law, in violation of 42 USC §§1983, 1985(3), and 1986.¹ The statute of limitations in Michigan for the tort of fraud is either three or six years, depending upon whether or not there is injury to person or property. MCLA §600.5813; MCLA §5805(8); See Case v Goren, 43 Mich App 673 (1972). A conversion claim must be brought within three years. MCLA §5805(8); Janiszowski v Behrmann, 345 Mich 8 (1956). The statute of limitations in §1986 actions is defined by the statute itself, and is one year. And generally, claims under §§1983 and 1985(3) have been found to be governed by Michigan's three year statute of limitations. See Gordon v City of Warren, 579 F 2d 386 (CA 6 1979); Krum v Sheppard, 255 F Supp 994 (WD Mich 1966), aff'd 407 F 2d 490. Plaintiff's claims against Defendant Cook arise out of Defendant's alleged refusal to return Plaintiff's property and the alleged removal of the property from her house sometime around

1969, and Defendant Cook's statements in the petition for probate filed in 1968. Even a six year statute of limitations had long expired when Plaintiff filed this action in 1981. Clearly Plaintiff will be unable at this time to bring any claims against Defendant Cook's personal representative or estate on these grounds. Plaintiff argues that the instant action is merely a continuation of his state court lawsuit, which was not time barred when commenced in 1969. However, the present action was commenced originally in federal court in 1981. The fact that it is based on the same circumstances does not make it the same action for statute of limitations purposes.

Because Defendant Cook was never properly made a party Defendant to this action, and because it appears from the fact of Plaintiff's Complaint that claims against this Defendant or her successors are time barred by the applicable statutes of limitations, Plaintiff's

claims against Defendant Cook are dismissed with prejudice.²

II. Judge Sherman Faunce, II

Defendant Michigan District Judge Sherman P. Faunce, II filed a Motion to Dismiss Plaintiff's claims as to him, on October 13, 1981. Defendant Faunce argues that Plaintiff's Complaint must be dismissed because it is barred by the statute of limitations, and because Defendant is immune from liability.

It is clear from the fact of the Complaint that Plaintiff's allegations as to this Defendant involve conduct which occurred on or before April 18, 1978, when Defendant Faunce denied Plaintiff's Motion for Retention of his state court action and dismissed the cause for lack of progress. Because this was an action taken by Defendant in his judicial capacity, he is absolutely immune from liability for damages even if his ruling was in error. Stump v Sparkman, 435 US 349, 359 (1978). In

addition, it appears that any claims against this Defendant for violations of the civil rights statutes are barred by the statute of limitations, since this action was filed over three years after the judge's 1978 ruling. Plaintiff's Complaint as to Defendant Faunce is therefore dismissed with prejudice.

III. Noel L. Lippman

Defendant Lippman has also moved for dismissal of Plaintiff's Complaint on the grounds that the applicable statutory periods of limitation have expired so as to preclude any claims by Plaintiff against him.

It appears that Defendant Lippman first became involved in the dispute between Plaintiff and Defendant Cook when Plaintiff retained Lippman to represent him in state court, in August of 1969. The Complaint contains no allegations of any continued relationship between Plaintiff and this Defendant after March 1975. However, assuming

that Plaintiff's claims against Defendant arise out of the dismissal of his state court action in 1978, the Court will view that date as the time at which Plaintiff's cause of action against this Defendant accrued. Reading the Complaint in the light most favorable to Plaintiff, the Court will assume that Plaintiff intends to state claims of violations of his civil rights, and malpractice. The Michigan statute of limitations in actions for malpractice is two years. MCLA §600.5805(4). As has been noted above, the relevant statutes of limitations for civil rights actions allow a plaintiff no more than three years to file his action.

Since more than three years had expired as the time this action was commenced, Plaintiff's claims against this Defendant are time barred, and his complaint as to this Defendant is dismissed with prejudice.³

IV. Howard S. Siegrist

Defendant Siegrist filed his Motion to Dismiss on October 26, 1981, also on the grounds that Plaintiff's action as to him is barred by the applicable statutes of limitations. Defendant Siegrist is the attorney whose name appears as Plaintiff's representative on an amended complaint filed in Plaintiff's state court action on March 24, 1975. While Plaintiff has not clearly alleged how, if at all, he was injured by the filing of the amended complaint, the Court will assume for the purposes of this motion that Plaintiff has stated claims of civil rights violations and fraud against this Defendant. Because the Complaint in this action was filed more than six years after the filing of the amended complaint, Plaintiff is barred from bringing this action against Defendant Siegrist, and his Complaint as to this Defendant is dismissed with prejudice.

V. Donald William Sargent

Defendant Attorney Sargent represented Defendant Cook in Plaintiff's state court proceedings, and also requested that the probate petition for Stanley Cook be dismissed. He has moved for dismissal solely on the basis of improper venue, pursuant to 28 USC §1406(a). It does appear that venue for this action does not properly lie in the Western District of Michigan. All of Defendants appear to reside in the Eastern District of Michigan; the probate of Stanley Cook's estate took place in Eastern Michigan; Plaintiff's state court action was brought in the Eastern District of Michigan; and Defendant Cook resided in the Eastern District of Michigan when she allegedly converted Plaintiff's property. Because this is an action which is not, and could not be, based solely upon diversity jurisdiction, venue is proper only in the Eastern District of Michigan. 28 USC §1391(b).

28 USC §1406(a) provides that where a case is filed in the wrong district, the Court may dismiss the action, or "if it be in the interest of justice" the Court may transfer the case to the district in which the action should have been brought. In this case, while Defendant Sargent has not moved for dismissal for failure to state a claim, or because the statute of limitations bars the action, it appears that either of these defenses would result in dismissal with prejudice against Plaintiff. For that reason, it would not be in the interest of justice to transfer this action to the Eastern District of Michigan, and Plaintiff's action against Defendant Sargent is therefore dismissed. And because it appears from the fact of the Complaint that Plaintiff's civil rights claims against this Defendant are barred by the statute of limitations, and that Plaintiff fails to state a cause of action for fraud against this Defendant, the dismissal is

with prejudice.

VI. Conclusion

For reasons set forth above, Plaintiff's Complaint is dismissed with prejudice as to all Defendants.⁴ Because dismissal is appropriate, it is not necessary to decide Plaintiff's Motions for Summary Judgment, filed October 19 and 23, 1981. A careful review of those motions does not reveal any basis for denying the motions to dismiss, nor does it appear that summary judgment could have been granted in Plaintiff's favor. Plaintiff also requests in a motion filed October 19, 1981, that this Court convene a grand jury to review the alleged misconduct of Defendant Lippman. Two grand juries are currently in session in this District, obviating the need for the Court to consider this motion. If Plaintiff wishes to get a Complaint before the grand jury, he must go through the United States Attorney's Office. That office will only refer cases to the grand

jury where there is a report from an investigative agency demonstrating evidence of criminal activity within this District. Plaintiff is therefore directed to the Federal Bureau of Investigation to seek investigation of any claims.

RICHARD A. ENSLEN
US District Judge

DATED: 2-4-83

¹Plaintiff's allegations of criminal conduct, scattered throughout his Complaint, are of course outside the scope of this Court's jurisdiction in a civil action, and are not further considered. Plaintiff has also alleged violations of 42 USC §1988, but that section does not set forth an independent cause of action. See Moor v Alameda County, 411 US 693, 702 (1973).

²Because these issues are dispositive of Plaintiff's claims against Defendant Cook, the Court need not discuss Defendant's other proposed grounds for dismissal. However, the Court notes that it does appear that venue does not lie in the Western District of Michigan, and that Plaintiff has not adequately alleged a claim of fraud against this Defendant.

³Plaintiff has alleged in his answer to Defendant's motion, that Defendant's affidavit is made in bad faith and therefore Plaintiff is entitled to summary judgment. Grant of summary judgment is not the appropriate remedy when affidavits are submitted in bad faith. FRCP 56(g). Moreover, Plaintiff has not demonstrated how Defendant has in bad faith stated facts with specific regard to this motion. In fact, the basis of this motion is Plaintiff's own Complaint. Any bad faith which may have occurred during the course of the attorney-client relationship between Plaintiff and this Defendant, does not affect the merits of Defendant's arguments in the instant motion.

⁴While dismissal of this action is largely based upon statute of limitations grounds, it also appears that this action was commenced in an improper venue; the presence of this Court's jurisdictional minimum of damages, is likewise dubious. Moreover, while this Opinion assumes

for the purpose of the motions that Plaintiff states claims against the Defendants, it is not at all clear that that is the case.

BOYD VEENKANT,

Plaintiff,

File No. K 81-309

v

JANNETTE L. COOK (Kuczynski);
ATTORNEY DONALD WILLIAM SARGENT;
ATTORNEY NOEL L. LIPPMAN; ATTORNEY
HOWARD S. SIEGRIST; SHERMAN FAUNCE,
37TH DISTRICT COURT JUDGE,

Defendants.

ORDER

In accordance with the Opinion in the above entitled action, issued February 4th, 1983,

IT IS HEREBY ORDERED that Defendants' Motions to Dismiss are granted, and the Complaint is hereby dismissed with prejudice.

RICHARD A. ENSLEN
US District Judge

Dated: 2-4-83

BOYD VEENKANT,

Plaintiff,

File No. K 81-309

v

JANNETTE L. COOK (Kuczynski);
ATTORNEY DONALD WILLIAM SARGENT;
ATTORNEY NOEL L. LIPPMAN; ATTORNEY
HOWARD S. SIEGRIST; SHERMAN FAUNCE,
37TH DISTRICT COURT JUDGE,

Defendants.

ORDER

In light of this Court's Opinion and Order
of February 4th, 1983, Plaintiff's Motion
pursuant to Federal Rule of Civil Procedure
45(b) is hereby DENIED.

IT IS SO ORDERED.

RICHARD A. ENSLEN
US. District Judge

DATED: 2-4-83

BOYD VEENKANT,

Plaintiff,

File No. K 81-309

v

JANNETTE L. COOK (Kuczynski);
ATTORNEY DONALD WILLIAM SARGENT;
ATTORNEY NOEL L. LIPPMAN; ATTORNEY
HOWARD S. SIEGRIST; SHERMAN FAUNCE,
37TH DISTRICT COURT JUDGE,

Defendants.

ORDER

Plaintiff having moved, pursuant to Federal Rule of Civil Procedure 60(b)(2) and (3), for reconsideration of the Court's Opinion and Order in the above captioned cause, dated February 4, 1983; the Court having carefully reviewed Plaintiff's Motion, and the file herein; the Court adheres to its Order of February 4, 1983 for the reasons stated in its Opinion of that date, and Plaintiff's Motion is

24a

Appendix A

therefore denied.

IT IS SO ORDERED.

RICHARD A. ENSLEN
US District Judge

DATED in Kalamazoo, MI: 2-18-83

BOYD VEENKANT,

Plaintiff-Appellant,

v

JANNETTE L. COOK (Kuczynski);
ATTORNEY DONALD WILLIAM SARGENT;
ATTORNEY NOEL L. LIPPMAN; ATTORNEY
HOWARD S. SIEGRIST; SHERMAN FAUNCE,
37TH DISTRICT COURT JUDGE,

Defendants-Appellees.

BEFORE: LIVELY and MERRITT, Circuit Judges;
and PECK, Senior Circuit Judge.

ORDER

This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiff appeals the district court order entered February 7, 1983, dismissing his civil rights action. Having carefully examined the record and briefs, this Court concludes the

district court did not err in disposition of this case. Accordingly, for the reasons stated in the district court opinion entered February 7, 1983 the order of the district court is hereby affirmed. Rule 9(d)(2), Rules of the Sixth Circuit.

Based upon the record in this case and the briefs filed, we are convinced that this appeal is frivolous. This appeal amounts to little more than a continued abuse of process which raises no colorable legal or factual basis for the relief sought. It is totally lacking in merit, framed with no relevant supporting law, conclusory in nature, and utter nonsense. In fact this Court notes unfavorably the pattern of frivolous litigation perpetuated by plaintiff. See Veenkant v Gurn, Case No. 82-1582 (6th Cir. 1983); Veenkant v Wesler, Case No. 82-1584 (6th Cir. 1983); Veenkant v Burdick, Case No. 82-1583 (6th Cir. 1983); Veenkant v Corsiglia, Case No. 82-1824 (6th

Cir. 1983) (unpublished opinions).

Pursuant to Federal Rule of Appellate Procedure 38, we award double costs and just attorneys fees to appellees.

ENTERED BY ORDER OF THE COURT

Clerk

REISSUED AS MANDATE: OCTOBER 28, 1983

COSTS: Printing of brief	\$126.00 x 2 =	\$ 252.00
Attorney Fees		= <u>\$3,000.00</u>
TOTAL		<u>\$3,252.00</u>

No. 83-635

Office Supreme Court, U.S.

FILED

NOV 9 1983

ALEXANDER L. STEVAS,

In the Supreme Court of the United States

October Term, 1983

BOYD VEENKANT,

Petitioner,

vs.

JANNETTE L. (KUCZYNSKI) COOK; Attorney DON-
ALD WILLIAM SARGENT; Attorney NOEL L. LIPP-
MAN; Attorney HOWARD S. SIEGRIST; 37th District
Court Judge SHERMAN P. FAUNCE,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM OPPOSING CERTIORARI

PLUNKETT, COONEY, RUTT, WATTERS,
STANCZYK & PEDERSEN

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No. 83-635

In the Supreme Court of the United States

October Term, 1983

BOYD VEENKANT,

Petitioner,

vs.

JANNETTE L. (KUCZYNSKI) COOK; Attorney DON-
ALD WILLIAM SARGENT; Attorney NOEL L. LIPP-
MAN; Attorney HOWARD S. SIEGRIST; 37th District
Court Judge SHERMAN P. FAUNCE,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM OPPOSING CERTIORARI

Petitioner brings this *pro se* federal Civil Rights Act case for the purported violation of his alleged rights when a state court of limited jurisdiction, the 37th Michigan Judicial District Court, dismissed Petitioner's underlying claims for fraud and tortious conversion of property. Petitioner sued Respondent attorney Donald William Sargent, *inter alia*, alleging that Respondent acted fraudulently as an attorney in representing another Respondent, Jannette L. Cook (Kuczynski), in defense of the fraud and conversion claims. Since Petitioner's Civil Rights Act case was filed in the United States District Court for the Western District of Michigan, and since all the facts rele-

vant to this action arose out of the venue of the United States District Court for the Eastern District of Michigan, including the fact that all Respondents resided in the Eastern District of Michigan, the United States District Court for the Western District of Michigan, Honorable Richard A. Enslen, dismissed Petitioner's claim pursuant to 28 USC §1391(b) and 28 USC §1406(a).

The trial court noted specifically in its February 4, 1983 opinion that it was not "in the interest of justice" that the court transfer the case to the United States District Court for the Eastern District of Michigan because the applicable statutes of limitations clearly barred the action against Respondent Sargent even as of the date of filing the federal case in the United States District Court for the Western District of Michigan (Petitioner's Appendix, A-42; Trial Court Opinion, pp. 8-9).

The United States Court of Appeals for the Sixth Circuit summarily dismissed Petitioner's appeal, noting that it was "frivolous", "lacking in merit", and "utter nonsense" (Petitioner's Appendix B-44-45). Additionally, observing a "pattern of frivolous litigation perpetuated by plaintiff", the United States Court of Appeals for the Sixth Circuit awarded double costs and just attorney fees to Respondents, pursuant to FRAP 38 (Petitioner's Appendix B-45).

As correctly noted by the previously mentioned courts, there is no question but that venue was improperly laid in the United States District Court for the Western District of Michigan, and that due to the expiration of the applicable statutes of limitations at the time of filing the within action, it was not "in the interest of justice" to transfer this case to the United States District Court for the Eastern District of Michigan.

Therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

PLUNKETT, COONEY, RUTT, WATERS,
STANCZYK & PEDERSEN

By: JOHN P. JACOBS
(Counsel of Record)

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*Attorneys for Respondent
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DATED: November 7, 1983